

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In re

Review of the Prime Time Access
Rule, Section 73.658(k) of the
Commission's Rules

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MM Docket No. 94-123

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REPLY COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

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I. INTRODUCTION AND SUMMARY

The goals of the parties who advocate little or no change in the Prime Time Access Rule (PTAR) are clear. The stations and major syndicators who are subsidized and protected from competition by the Rule want no change. The Hollywood studios, producers and stations whose business interests are adversely affected by the Rule want the door to competition cracked open only enough to let them, but not other competitors, through. Not one of these parties has provided credible economic evidence, convincing analysis or a rational policy basis for the outcome it urges on the Commission.

To the contrary, the record in this proceeding clearly demonstrates that PTAR is unnecessary, has failed to achieve any of its objectives and has seriously diminished competition and diversity. The Commission therefore must reject the irrelevant and specious arguments proffered in support of any aspect of

PTAR. For the following reasons, it should repeal the Rule in its entirety.¹

First, it was never the purpose of the PTAR to protect stations that were not affiliated with NBC, ABC or CBS from competition, or to give them a "competitive advantage" relative to affiliates of the three original networks. The original goal of PTAR was to foster new sources of programming. It was certainly never the purpose of the Rule to ensure that unaffiliated stations could bid for "highly-popular off-network syndicated hit programs" without competition from network affiliates in their markets. Instead this has become the unintended consequence of PTAR regulation that INTV and others now insist is the basis upon which the Commission must preserve the Rule. A quarter century after PTAR's adoption, it would be totally arbitrary and capricious for the Commission to base retention of the Rule on these ex post facto rationales.

Second, even if protecting weaker, UHF independent stations

¹ The economic arguments submitted by (1) the Association of Independent Television Stations (INTV), King World Productions (King World) and Viacom (prepared by the Law and Economics Consulting Group) and (2) the Coalition to Enhance Diversity (prepared by Messrs. Williamson and Woroch), are addressed in the report entitled "Prime Time Access Rule: A Supplementary Economic Analysis" ("Supplemental Economic Analysis") submitted by Economists, Incorporated on behalf of NBC, Capital Cities/ABC and CBS in conjunction with their Reply Comments in this proceeding.

from competition by handicapping their competitors had been an original goal of PTAR, there is no coherence or rationality to the crazy-quilt grouping of stations that today enjoy a "competitive advantage" because of PTAR. The proponents of the Rule lump its beneficiaries together under the label "independent stations." But that label is clearly inaccurate, and the group of stations the Rule benefits cannot conceivably be defended as in need of government "protection."

Fifty-five percent (55%) of the stations mislabelled "independent" that are protected by PTAR are affiliated with Fox, the United Paramount ("UPN") or Warner Brothers ("WB") Networks. Another 29% offer home shopping, religious or foreign language formats. And a large number of stations that are protected by PTAR are owned by large and powerful group owners such as Tribune Broadcasting, Fox Television, Chris-Craft and Gaylord Broadcasting.

Thus, PTAR favors an incoherent and irrational grouping of stations that has no coherence from a public policy perspective.

Third, even if the Commission believes the public interest requires giving some logical grouping of weak or marginal stations a "competitive advantage," PTAR is an ineffective and clumsy way to achieve it. NBC will demonstrate in these Reply Comments that PTAR benefits only financially strong, major group-

owned stations in major markets, the majority of which are affiliated with Fox or one of the other two new broadcast networks. PTAR's only demonstrable effect is to guarantee that these few stations can obtain "hit" off-network programming at below competitive prices.

On the other hand, PTAR does not benefit stations that are arguably "true" independents. In the Top 50 markets where PTAR applies, there are only 41 stations that are not on a VHF frequency, are not affiliated with NBC, CBS, ABC, Fox, UPN or WB Networks, do not program in a specialized format (i.e., home shopping, religious or foreign language), and/or are not owned by a major group. And not one of these 41 "true" independent stations is taking advantage of PTAR to broadcast a "hit" off-network program during the Access period -- the consequence of PTAR that INTV insists is critical to independent stations' survival.

If protecting truly marginal, truly unaffiliated stations is determined to be a public interest goal in the current competitive environment, then the Commission should initiate an inquiry to determine which stations should fall into the protected category, and then conduct a rulemaking to craft a rational, effective and targeted way to achieve its regulatory objectives. NBC submits that such proceedings are unwarranted because the record already demonstrates there is no economic or

policy justification for a rule that gives any grouping of stations a competitive advantage over others. But, in any event, there is clearly no justification for retaining an overbroad and ineffective regulation like PTAR.

Fourth, the record clearly demonstrates that PTAR is not required to preserve program diversity. In fact, PTAR has had just the opposite effect, creating the most concentrated and homogeneous hour on television. Four companies supply 96% of the first-run syndicated programming broadcast in Access on Top 50 network affiliates. Three of the four (Fox, Paramount and Warner Brothers) are, and have always been, major suppliers of network prime time programming. All three now have broadcast networks of their own. And the same Hollywood studios who produce the lion's share of network prime time programming also produce 85% of Top 50 affiliate Access programming. In short, PTAR has not "worked," as its proponents contend; it has been a miserable failure.

Finally, the claims that PTAR must be retained in order to curb "network dominance" must be rejected out of hand. These claims are not supported by any credible data or analysis, and are belied by marketplace realities that the Commission has repeatedly acknowledged.

In short, there is no justification for retaining any part

of PTAR. If the Commission decides to phase out the Rule and to initially eliminate only the off-network restriction, it should reject the suggestion that the off-network provision of PTAR be modified to provide regulatory relief only to the major Hollywood studios that produce network programming. Instead, it must immediately allow both off-network programs (including those syndicated by a network entity after the sunset of fin/syn) and first-run syndicated programs produced by a network to compete in the syndication marketplace for clearance on affiliated stations in Access.

The Commission must also reject the suggestion to take no action on PTAR until the effect of the fin/syn sunset can be assessed. It should not retain one unnecessary, anticompetitive and counterproductive rule (PTAR) because a companion rule (fin/syn) -- which is based on the same faulty premises -- is finally disappearing. Neither regulation makes sense in today's marketplace and both should be eliminated.

II. THERE IS NO JUSTIFICATION FOR RETAINING PTAR IN ORDER TO GIVE A MEANINGLESS AND ILLOGICAL GROUPING OF STATIONS A COMPETITIVE ADVANTAGE OVER AFFILIATES OF NBC, ABC AND CBS

Proponents of PTAR, including the Association of Independent Television Stations ("INTV"), Viacom and King World, argue that the Rule is responsible for the growth and strength of what they term "independent stations," and that repeal or modification will cause these broadcasters significant harm. The most ardent proponent of this view is INTV, which argues that any change in PTAR would seriously injure these stations by depriving them of access to "a small supply of highly-popular off-network syndicated hit programs during prime time access." According to INTV, unless the government continues to insulate the stations that are protected by PTAR from competition for these few programs, they will suffer a loss of audience and revenues, their service to the public will deteriorate and the growth of emerging networks will "grind to a halt." (INTV Comments, pp. 41-64).

There are a number of reasons why this line of argument fails to provide any basis for retention of PTAR, which are discussed below.

A. The Purpose of PTAR Was Never To Give Certain Stations A Competitive Advantage Over Others

The fundamental premise of INTV's argument is simply wrong. It was never the purpose of the Prime Time Access Rule to protect

stations that were not affiliated with NBC, ABC or CBS from competition or to give them a "competitive advantage" relative to affiliates of the three networks. And it was certainly never the purpose of the Rule to ensure that these stations could bid for "highly-popular off-network syndicated hit programs" without competition from network affiliates in their markets.

As the Commission admits in the Notice of Proposed Rulemaking (NPRM, par. 14), the role of PTAR in fostering the growth of new stations and broadcast networks is a rationale that developed "in the years since PTAR was adopted," and was not a reason for the Rule at its inception. The original express goal of the PTAR had nothing to do with providing a "competitive advantage" to "independent" stations. Rather, it was to "provide a healthy impetus to the development of independent program sources." The Commission hoped an increased supply of programs that had not passed through the "network funnel" would provide "concomitant benefits" to both affiliated and unaffiliated stations. Prime Time Access Rule, 18 RR2d 1825, 1844 (1970); PTAR Second Report and Order, 32 RR2d 697, 704 (1975). Bolstering the competitive fortunes of one type of station at the expense of another was clearly never one of the Commission's objectives.

As NBC demonstrated in its March 7 Comments, in terms of the Rule's principal original objectives -- the development of

diverse sources of programming and increased station programming choice -- PTAR has utterly failed. PTAR has created the most concentrated and least diverse hour on television, where 96% of the syndicated programming broadcast by Top 50 network affiliates is supplied from only four sources, three of which are major Hollywood studios that have always been primary suppliers of network prime time programming. In terms of program producers, over 85% of the syndicated programs broadcast during access by Top 50 market affiliates are produced by the same MPAA studios that have always produced programming for the networks.

Twenty five years after PTAR was adopted, its proponents would like to save the Rule by constructing new justifications and rationales for its existence. But if the Commission is going to justify PTAR on wholly new grounds, it must, at a minimum, provide an explicit analysis and reasoned explanation to support its change of course. Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970); Columbia Broadcasting System v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971). That analysis and explanation must demonstrate that (1) there is a real marketplace problem that requires a regulatory remedy and (2) that PTAR is the appropriate regulatory response. Home Box Office, Inc. v. FCC, 567 F.2d 9, 36, 40-42 (D.C. Cir. 1977). Without a new grounding in the realities of today's marketplace, it would be arbitrary, capricious and inconsistent with reasoned decision-making for the Commission to retain PTAR in order to provide

"independent stations" a "competitive advantage -- an ex post facto rationale which is fundamentally different from, and even at odds with, the original justification for and purpose of the Rule.

B. There Is No Logic Or Coherence To The Grouping Of Stations Which Are "Competitively Advantaged" By PTAR

Even if the Commission can somehow ignore or resolve the fact that giving a particular group of stations a "competitive advantage" was not the original purpose of PTAR, the grouping of stations on which PTAR confers a "competitive advantage" is incoherent and irrational. The Rule applies indiscriminately to Fox affiliates, UPN and WB affiliates, stations owned by major groups such as Tribune Broadcasting, stations with home shopping, religious and foreign language formats, as well as wholly unaffiliated stations. INTV and other proponents of PTAR, and the Commission in the NPRM, group these disparate stations under the label "independents." But the term "independent" is a misnomer, and a rule that treats these disparate stations the same way -- as though they were part of a uniform or even comparable group -- is completely lacking in rationality and coherence.

INTV claims there are 546 so-called "independent" stations

nationwide. (INTV Comments, Exh. 1).² But 160 of these (29%) are affiliated with Fox, and 141 (26%) are affiliated with UPN or WB Networks. Thus over half the so-called "independent" stations are now network affiliates. PTAR has no practical effect on another 161 stations (29%), which present home shopping, religious or foreign language formats. Moreover, a significant number of the 546 stations labelled "independent" by INTV are owned by a major group such as Tribune Broadcasting, Chris-Craft and Fox Television.

But PTAR doesn't even apply to half the stations in INTV's odd collection of so-called "independents." It affects only those located in the Top 50 markets, where INTV claims there are 291 stations that are protected from competition by PTAR. However, INTV's data shows that 109 of these stations offer home shopping, religious or foreign language formats and are in practice unaffected by the Rule. That leaves 182 PTAR-protected stations in the Top 50 markets that offer "general interest" programming. These 182 stations are the only ones INTV claims to really care about. (INTV Comments at n. 24).

Fifty-four (54) of the "general interest" stations that are protected by PTAR are affiliated with the Fox Network. Is INTV

² In its Reply Comments, INTV has modified the list of Top 50 independent stations that appears at the end of Exhibit 1 to its March 7 Comments. NBC's various analyses of Top 50 stations relies on this modified list.

claiming that even after Fox's programming and ratings successes, that its affiliates require a government-imposed "competitive advantage"?³ Another 76 of these protected stations are affiliated with either the UPN or WB Networks. Is INTV taking the position that these stations need a government-sanctioned subsidy? Is INTV arguing for continued government protection for the 39 "general interest" Top 50 PTAR-protected stations that broadcast on VHF frequencies? Or is it INTV's contention that the five Top 50 market UHF PTAR-protected stations owned by such large group owners as Fox Television, Gaylord Broadcasting, All American TV, Outlet Communications and Sinclair Broadcasting need the government to shield them from competition?⁴

The fact is that according to INTV's own data, in the Top 50 markets there are only 41 stations out of the group of 182 it purports to care about that are not affiliated with Fox, UPN or WB, not on a VHF frequency and/or not owned by a major group with

³ An Economic Analysis of the Prime Time Access Rule ("Economic Analysis"), submitted in conjunction with NBC's March 7 Comments, at 13-15. For the 1994-95 season, the Fox Network experienced prime time ratings gains of 9% over the previous season -- more than any other network (in fact, ABC and CBS both lost rating points). For the season, Fox beat one of the older networks, CBS, in the key 18-49 demographic group that is most attractive to advertisers.

⁴ Fox Television owns WATL, Atlanta; Gaylord Broadcasting owns KHTV, Houston; All American TV owns WWTO, Chicago; Outlet Communications owns WNCN, Raleigh-Durham; and Sinclair Broadcasting owns WTTA, Tampa-St. Petersburg (Warren Publishing, 1995).

more than adequate resources to compete against NBC, ABC and CBS affiliates in their markets. The costs to competition and diversity exacted by the PTAR far outweigh any marginal benefit the Rule confers on these few stations.

In fact, PTAR does not even help these 41 stations. The record shows that PTAR only benefits financially strong, major group owned independent stations in the major markets, the majority of which are affiliated with Fox or one of the other two new broadcast networks. INTV's fundamental position is that if the Top 50 stations now in the protected group must compete against NBC, ABC, and CBS affiliates for the "small supply of highly-popular off-network syndicated hit programs during prime time access," the three-network affiliates will inevitably win the bidding contest, and the protected stations' ratings and revenues will decline, as will their service to the public. However, according to INTV's own data, there is not a single PTAR-protected station in the Top 50 markets exhibiting a "hit" off-network program that is (1) a UHF station that is (2) not affiliated with a network and/or (3) not owned by a major group. In other words, not one of the 41 stations that remain after network affiliations, VHF frequencies, specialty formats and major group ownership are peeled away is benefitting from what INTV has identified as the key "competitive advantage" conferred by PTAR.

NBC's analysis of INTV's data,⁵ which is attached as Exhibit A to these Comments, reveals, among other things, the following:

- During the 1993 November Sweeps, only 46 out of 291 of the stations in the Top 50 markets that INTV labels "independent" (15% of the total) broadcast one of the top 5 off-network programs during prime time access.
- Thirty-six (36) out of the 46 are affiliated with the Fox, UPN or WB Networks, leaving only 10 unaffiliated stations broadcasting one or more of these top 5 off-network programs. Seven of these affiliated stations are VHF.
- All 10 of the remaining unaffiliated stations are owned by a major group (three or more stations), including Tribune Broadcasting, Gaylord Broadcasting, and Scripps Howard Broadcasting. Three of the 10 unaffiliated stations are VHF.

In short, even assuming the original goal of PTAR was to protect UHF stations that were "independent" (e.g., not affiliated with NBC, ABC or CBS) in 1970 from competition for "hit" off-network programs (which it was not), and even assuming that in 1995 there is a coherent grouping of stations that needs this protection to survive (which there is not), PTAR's only demonstrable effect seems to be to guarantee that a few

⁵ INTV claims that five (5) off-network "hits" filled 41.6% of November, 1993 prime access half hour segments on all independent stations (not just Top 50 market), and generated 50% of their ratings points. (INTV Comments at 42). INTV identifies the top 5 off-network programs for this period as Roseanne, Full House, Cheers, Married With Children and Cops. However, Married With Children and Cops are off-Fox programs and are therefore unaffected by PTAR and irrelevant. According to INTV's data, the next two most popular off-original network prime time access programs were Golden Girls and The Cosby Show, which were the fourth and fifth programs NBC analyzed. (INTV Comments, Exh. 2).

financially strong, group-owned stations, almost all of which are now affiliated with a broadcast network, can obtain "hit" off-network programming at below competitive prices. PTAR gives these few stations a "competitive advantage" at the expense of NBC, CBS and ABC affiliates, many of which are not group-owned, may be on UHF frequencies and may be less financially secure than the protected stations they are subsidizing under the Rule.⁶ Worse, the handful of stations enjoying a "competitive advantage" under PTAR do so at the expense of competition, diversity and consumer welfare.

If the Commission believes that there is some rational grouping of marginal television stations that requires protection from competition, and further decides that such protection furthers the public interest, it should devise a rule that accomplishes that goal directly and with laser beam precision. A rulemaking should be conducted to determine the characteristics of stations that warrant a "competitive advantage" in today's marketplace, and the most rational and efficacious way to provide that advantage through regulation. Even if such stations exist, there is no justification for retaining PTAR, an across-the-board subsidy to an over-inclusive, grab-bag group of stations that takes no account of each station's unique competitive position, and that distorts competition and lessens diversity throughout

⁶ Economic Analysis at 51-57. Supplemental Economic Analysis at 24-28.

the television marketplace.

C. There Is No Economic Or Policy Basis For A Government Rule Giving One Set Of Stations A Competitive Advantage Over Others

As the Supplementary Economic Analysis points out, the principal proponents of PTAR cannot advance a coherent economic rationale for the Rule because the Rule does not address any competitive failures of the market. Instead the Rule constitutes government interference in and distortion of the marketplace in order to lessen competition and the cost of off-network programs for a crazy quilt group of stations that is illogically grouped together and labelled "independents." This is achieved at the expense of Top 50 affiliates of NBC, CBS and ABC. Indeed, according to PTAR's proponents, this is the present purpose of the Rule. Thus, PTAR is little more than a government subsidy for one group of broadcasters that another group of broadcasters are obligated to fund. This is unnecessary, unfair and simply bad policy.

If there ever was a basis for a regulation protecting television stations that are not affiliated with one of the original networks, there is none today. INTV admits that "no one may deny that independent television has grown and prospered." (INTV Comments, p. 22). Twenty-five years of "infant industry" protection for so-called "independent" stations is long enough. There has to be a limit on how much and for how long the

government interferes with competitive marketplace forces to prop up allegedly weaker competitors. Moreover, there is no credible evidence that PTAR was responsible for the growth stations who were not affiliated with NBC, ABC or CBS, or is necessary for their continued success. As the Supplementary Economic Analysis demonstrates, the economic analysis submitted by INTV that purports to show that the growth and ratings success of so-called "independent" stations is a direct result of PTAR is seriously flawed, as is the analysis that supports INTV's claim that these stations' ratings would suffer a precipitous decline if PTAR was repealed or modified.⁷

PTAR not only blatantly discriminates in favor of stations that do not need a government-imposed "competitive advantage," but it does so by handicapping only one set of competitors -- affiliates of the three original networks. The stations in the odd grouping labelled "independents" also compete against each other, cable, DBS and wireless cable, home video and soon video dial tone. The newer broadcast networks -- Fox, UPN and WB -- have no doubt turned their affiliates into more formidable competitors that the few remaining truly unaffiliated independents must now contend with. INTV even argues that because of the increased competition from additional broadcast stations, cable and broadcast networks, the stations it champions

⁷ See, Supplementary Economic Analysis at 15-21. FTC Staff Comments at 31-32.

need the protections of PTAR more than ever.⁸ Yet PTAR does nothing to protect these stations from cable or the affiliates of the Fox, UPN and WB Networks. The handicap is imposed solely and entirely on NBC, ABC and CBS affiliates.⁹ If the regulatory objective is to protect truly unaffiliated, independent stations from competition in the name of outlet diversity, then a rule that doesn't address the effect of any of these competitors makes no policy sense.

Fundamentally, a government regulation that favors one set of competitors over another is simply bad policy. As the FTC Staff states in its comments

If the PTAR resulted in a reduction in the quality of programming offered by incumbent affiliates, it may have encouraged entry [by independent stations] that otherwise would not have occurred...From a competition policy perspective, this entry would not necessarily be viewed as evidence of desirable market performance -- the opposite may be true....[I]f the PTAR helped independent broadcasters by imposing inefficiencies on network affiliates, that effect could be inconsistent with competition policy. (FTC Staff Comments at 30, 33).

⁸ INTV admits that cable carriage has all but eliminated the UHF technical handicap, but contends that cable carriage has simultaneously exposed UHF stations to more competition for viewers, more than offsetting any audience gain the stations obtained. (INTV Comments at 30).

⁹ As the Supplementary Economic Analysis points out, affiliates of the original networks are burdened with the cost of PTAR regardless of whether they are UHF or VHF stations, and regardless of their competitive strength relative to the group of stations the Rule protects.

No competitor likes increased competition, even though it is good for the consumer and serves the public interest.¹⁰ It is not surprising that the stations PTAR protects would like to preserve their government-guaranteed competitive advantages in a marketplace where the number of outlets and viewer options seem to increase on a daily basis. But it is time for these stations to compete without the crutch of an ill-advised and discriminatory government regulation adopted 25 years ago to address radically different marketplace conditions. Affiliates of NBC, CBS and ABC, who have confronted increased competition head-on, and have watched their viewers defect to other outlets (including many new broadcast stations). They should no longer be shackled with a rule that both forces them to subsidize their competitors and prohibits them from freely selecting programs that will best serve their viewers during prime time.

III. NON-NETWORK FIRST-RUN PRODUCTION WILL NOT "WITHER" WITHOUT PTAR

Just like independent stations, program producers and distributors, such as the Coalition to Enhance Diversity, the MPAA, King World and Viacom, would like to minimize the extent to

¹⁰ "[E]conomic entities normally will have a profit incentive to reduce or limit competition from other entities operating at the same stage of production...[A] local broadcaster would profit if it could reduce competition from other local broadcasters (and any other competitors for the sale of advertising)..." (FTC Staff Comments at 10).

which their businesses are exposed to new or stronger competition. The producer/distributors who now have significant first-run syndication businesses, and who enjoy having captive customers in the form of Top 50 market affiliates, oppose any change in PTAR. They have no desire to face competition from additional program suppliers, or to give their prime time access customers the opportunity to choose programs from other sources. The producer/distributors who depend on off-network programs for a significant portion of their revenues would like to see PTAR modified, but only to the extent necessary to give them, and no one else, the opportunity to compete for clearance on major market affiliates in Access. They do not want a truly competitive market, where programming produced or distributed by any entity could compete for affiliate clearances in Access. Thus, they argue for elimination of the off-network restriction, but want the prohibition against network programming to be retained.

The Commission should see these arguments for what they are: attempts to advance economic self-interest, not the public interest. The public interest would best be served if all types of programs from all sources could freely compete in the marketplace, and stations of all types could freely choose the programs that best serve their communities.

There is no economic or policy basis for favoring one type

of programming (first-run syndicated programs) at the expense of another (network programs), particularly since both types of programs come from the same production sources. For the government engage in such favoritism raises serious First Amendment concerns.¹¹ Broadcasters and viewers are not ultimately served by a rule that reduces the quality of network prime-time programs by limiting the returns the producers of those programs can realize. At long last the government should get out of the business of picking winners and losers in the programming marketplace. And, as we argued above, even if the Commission concludes that a policy that promotes first-run syndicated programming at the expense of network programming somehow serves the public interest, there is no reason why NBC, ABC and CBS affiliates alone should be forced to shoulder the burden.

It is hard for us to fathom how, on the basis of the record before it, the Commission could conclude that PTAR is a necessary or appropriate way to foster program diversity. PTAR was adopted because the Commission believed at the time that the market for first-run syndicated programming had to be artificially stimulated because there were insufficient outlets for the

¹¹ See, Supplementary Economic Analysis at 32-38, which discredits attempts by PTAR's proponents to support the claim of a systematic competitive bias in favor of off-network syndicated programming that requires a "corrective rule" like PTAR.

distribution of non-network programming. Clearly this is no longer the case, eliminating the cornerstone rationale for the Rule.

The record belies the assertion that PTAR has increased diversity in program supply and production, and that the production of first-run syndicated programs would dry up without the Rule. As NBC pointed out in its initial Comments, the only distributors and producers who have benefitted from PTAR are King World and the MPAA studios that have always been major suppliers of network programming. Thus, four companies -- King World, Viacom, Fox and Warner Brothers -- supply 96% of the first-run syndicated programming broadcast in access on Top 50 network affiliates. Each of the three major studios that are included in this group (1) has always been a major supplier of prime time programming to NBC, CBS and ABC, and (2) now has its own broadcast network. Eighty-five percent (85%) of the first-run syndicated programs broadcast by Top 50 affiliates in Access are produced by one of the major Hollywood studios, the same studios that have always produced programming for network prime time. Far from "working," as trumpeted by its proponents, PTAR has been a miserable failure in terms of increased program source diversity.

The Commission's goal now should be to restore true competition and local station choice to the marketplace. It

should stop subsidizing certain competitors and certain types of programs at the expense of others, and stop protecting a few powerful companies from competition. The viewing public will ultimately benefit if all program suppliers can compete in the syndication market and all local stations can freely choose programming from any source during the entire broadcast day.

IV. THE COMMISSION MUST DISMISS OUT OF HAND THE CONTENTION THAT PTAR MUST BE RETAINED BECAUSE NBC, CBS AND ABC CONTINUE TO "DOMINATE" VIEWING, ADVERTISING AND THEIR AFFILIATES

Lacking any credible economic or policy rationale for retention of PTAR, the proponents of the Rule resort to the old saw of "network dominance." They insist -- despite all evidence to the contrary -- that the networks still "dominate" television viewing and advertising, and that they can "force" their affiliates to clear programs they don't want. They make the baseless and hyperbolic prediction that without PTAR "networks will be permitted to own and control the fate of every minute of programming on their own stations and their affiliates," resulting in diminished access for independent productions, weaker independent stations and less diversity for the public.¹²

NBC thought the Commission had already put the notion of

¹² Comments of Media Access Project and People For The American Way, pp. 4-5.